RICHARD A. MAGOVICH

IBLA 94-306 Decided July 26, 1995

Appeal of a decision of the Oregon State Office, Bureau of Land Management, denying refund of mining claim rental fees. ORMC 145579-145614.

Affirmed.

1. Mining Claims: Rental or Claim Maintenance Fees: Generally

> The Department of the Interior and Related Agencies Appropriations Act of 1993, P.L. 102-381, 106 Stat. 1374, approved on Oct. 5, 1992, provides "[t]hat for every unpatented mining claim * * * located after the date of enactment of this Act through September 30, 1994, the locator shall pay $100 to the Secretary of the Interior or his designee at the time the location notice is recorded with the Bureau of Land Management to hold such claim for the year in which the location was made." 106 Stat. 1379. Except as provided in 43 CFR 3833.0-5(v)(2), rental fees accompanying the filing of location notices for claims that were located on Oct. 27-28, 1992, may not be refunded.

APPEARANCES: Richard A. Magovich, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Richard A. Magovich, President, Mineral Separation Technology, Inc. (MST, Inc.), has appealed the January 19, 1994, decision of the Oregon State Office, Bureau of Land Management (BLM), denying his request for a refund of $3,600 in mining claim rental fees. BLM denied his request under 43 CFR 3833.0-5(v)(2) (1993) because the claims were not null and void ab initio or abandoned and void as of the date the fees were paid.

MST, Inc., located the AMS 1-36 lode mining claims in sec. 21, T. 31 S., R. 6 W., Willamette Meridian, Douglas County, Oregon, on October 27-28, 1992. On January 11, 1993, Skinner & Associates filed copies of the location notices with BLM on behalf of MST, Inc., in

accordance with 43 CFR 3833.1-2, and enclosed its "check No. 2186, for [$]3,960.00 to cover the $10.00 filing fee per claim and $100.00 annual holding fee per claim."

On August 23, 1993, Magovich submitted $300 to BLM "for three mining claim yearly rental fees," and enclosed copies of the location notices for the AMS 20, 22, and 24 claims.

On December 22, 1993, Magovich wrote BLM requesting a refund of the "fees paid to secure [the] mining claims." He only wanted claims 20, 22, and 24, he said, but

> [i]nformation was given * * * that securing the 36 claims with a payment of $3,600.00 would create time until all the new regulations could be sorted out and proper monies would then be applied to securing the desired claims. * * * Now it seems that everyone has a new story. I would like to be treated as I was told in November [1992] -- no more, no less! * * * I respectfully submit this request for refund of $3,600.00 which was paid in error due to false information.

After reciting the facts set forth in the second paragraph of this opinion, BLM's January 19, 1994, decision stated:

> Upon receipt of a check * * * the claims were assigned BLM serial numbers * * *. Following serialization, a check of the land status records reflected the claims * * * were located on lands open for mineral entry.
>
> Refunds for service fees and rental fees are governed by regulations, 43 CFR 3833.0-5(v)(1) and (2). See Federal Register, Volume 58, No. 134, July 15, 1993, copy enclosed. Service charges for recording new claims and sites are not returnable after the document received has been docketed and/ or serialized. Rental fee payments are not returnable unless the mining claim or site has been determined as of the date the fees were paid to be null and void, ab initio, or abandoned and void by operation of law.
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> Therefore, it has been determined that [MST, Inc.] is not entitled to a refund in accordance with Bureau regulations, 43 CFR 3833.0-5(v)(1) and (2) because the claims were neither abandoned and void, nor null and void, ab initio, at the time of recordation.

MST, Inc., filed a timely appeal. In its Notice of Appeal, MST, Inc., states:

> [MST, Inc.] paid the sum of $3,600.00 due to false and misleading information given by the B.L.M. office in Roseburg Oregon in Oct. of ninety-two. At that time, the new regulations were newly [e]nacted and according to local officials "would defin[i]tely be overturned as the appeal process was in progress." Direct information was given to pay this large handling fee for all 36 claims and the desired claims could later be adjusted and monies applied to the desired claims to be kept. Ninety days after this information was given, the sum of $3,600.00 was received on Jan. 12,93. We were told that by Aug. 31 the final desired claims needed to be secured by an additional fee of $100.00/claim and that the deposit of $3,600.00 could apply to those monies.
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> On Aug. 31, the desired claims amounted to only three of the original thirty-six. The story by this time had slightly changed to the following: "We are deluged by people filing for Small Miners Exemption, please pay the $100.00/claim on the 3 desired claims and we will sort out the other monies in the fall." After several months, the story has been changed to cover-up mistakes and false information. I can understand confusion but the action of your agency borders on promiscuity. I have been made aware of regulations that specify and define the term "Non-refundable." I have also been informed that there is no accountability for false information given by a government agency; written policy always prevails.

By order dated April 21, 1995, BLM was requested to file an answer to Magovich's notice of appeal that addressed his allegations about what he was told by BLM. For BLM's reference, a copy of Magovich's December 22, 1993, letter was enclosed. BLM responded:

> We have contacted the following Roseburg District personnel regarding this issue: Ted Weasma (Mineral Specialist); Sharon Ingernoi (Public Contact Specialist); and Cathy Jensen (Realty Specialist). They would have been the ones most likely to have discussed mining claim related matters with the public. Neither Sharon Ingernoi nor Cathy Jensen recall[s] a conversation with Dr. Magovich. Ted Weasma could not recall a specific conversation with Dr. Magovich either, but does remember talking to claimants about similar matters. He said that he would not have told a claimant that he/she could have paid the required fees and then have the option to pick which claims to keep at a later time and expect a refund for those claims not wanted.
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> We have also spoken with Tina Seibert (Land Law Examiner) of the BLM Oregon State Office, who was working in the Mining Claims Section at the time of this alleged event. She has no recollection of speaking to Dr. Magovich.

[1] Although the regulations upon which BLM relies were not in effect until July 15, 1993, 58 FR 38186, 38198 (July 15, 1993), the Department of the Interior and Related Agencies Appropriations Act of 1993, P.L. 102-381, 106 Stat. 1374, was approved on October 5, 1992 -- before appellant located its claims on October 27-28, 1992. The Act provides

> [t]hat for every unpatented mining claim * * * located after the date of enactment of this Act through September 30, 1994, the locator shall pay $100 to the Secretary of the Interior or his designee at the time the location notice is recorded with the Bureau of Land Management to hold such claim for the year in which the location was made.

106 Stat. 1379.

Although appellant says he did not want all 36 claims located, the $100-per-claim payment was required by the Act as a condition of recording the claims at the time they were recorded. Only if the claims had been null and void ab initio could MST, Inc., have obtained a refund under 43 CFR 3833.0-5(v)(2) after it became effective. Because they were not null and void ab initio, in effect Skinner & Associates paid $3,600 for the option of retaining all the claims and the fees purchased the time for MST, Inc., to decide which ones it wanted to keep after August 31, 1993. If, as Magovich implies, he would not have located all 36 claims but for the erroneous advice given -- presumably, he instead would have spent more effort at the outset determining which ones he really wanted to locate -- we are constrained to answer that he is presumed to know the contents of Federal laws. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 385 (1947). Assuming BLM provided appellant the erroneous information he reports, estoppel will not lie against the Government in this case because one of the elements that must be established to support a claim of estoppel is that the party asserting estoppel must be ignorant of the true facts, Ptarmigan Co., 91 IBLA 113, 118 (1986), aff'd, Bolt v. United States, 994 F.2d 603 (9th Cir. 1991), and appellant is deemed to have knowledge of the true facts, i.e., the provisions of the Act. Affirmative misconduct, in the form of an official written decision, must also be established for estoppel to lie, and there is no official written decision involved in this case, only the oral advice he says he was given by BLM Roseburg staff. Henry L. Krizman, 104 IBLA 9, 11 (1988). 1/

1/ As we noted in a different context in our order dated May 10, 1994, in Powder River Basin Resource Council, IBLA 93-121, "by their nature, phone conversations often provide an unreliable basis upon which to predicate future actions since one party often believes he has heard something quite different from that which the other party believes he has said."

Therefore, in accordance with the authority delegated to the Interior Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, BLM's January 19, 1994, decision is affirmed.

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Will A. Irwin
Administrative Judge

I concur:

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James L. Burski
Administrative Judge